Supreme Court, U. S.
FILED
OCT 21 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-6061

JAMES B. CONLISK, JR., etc., et al.,

Petitioners,

vs.

ARDALE CALVIN, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

WILLIAM R. QUINLAN
Corporation Counsel of the City of Chicago
511 City Hall, Chicago, Illinois 60602

Attorney for Petitioners

DANIEL PASCALE
RICHARD F. FRIEDMAN
Assistant Corporation Counsel
Of Counsel

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

TABLE OF CONTENTS

	PAGE
OPINION BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTES INVOLVED	3
STATEMENT OF CASE	4
REASONS FOR GRANTING THE WRIT:	
I. The Question Of Justiciability Of The Claim Seeking Court-Imposed Standards For The Chicago Police Department Disciplinary System Is Identical To The Question Pending In This Court In *Rizzo* v. *Goode*, No. 74-942	8
II. A Split In The Circuits Exists Concerning Whether Courts Of Equity May Require Court-Imposed Operating Procedures To Remedy Police Civil Rights Violations	9
III. The Decision Below Creates A Dangerous Precedent In Conflict With The Traditional Rule Of Equity By Permitting Judicial Encroachment Upon Other Branches Of Government	11

IV.

The Complaint Was Insufficient To Establish Federal Question Jurisdiction Of The Claim Against The City Of Chicago 17

V.

The Organizations Have No Standing Because Neither They Nor Their Members Were Alleged To Have Suffered Actual Injury 18

CONCLUSION 19

APPENDICES:

A—Opinion of the United States Court of Appeals 1a

B—Order of the United States Court of Appeals Denying Rehearing 18a

LIST OF AUTHORITIES CITED

Cases

Allee v. Medrano, 414 U.S. 1020 (1974) 11 15

Baker v. Carr, 369 U.S. 186 (1962) 12, 13, 14

Breault v. Feigenholtz, 380 F.2d 91 (1967) cert. denied, 389 U.S. 1041 17

City of Kenosha v. Bruno, 412 U.S. 514 (1973) 17

Dandridge v. Williams, 397 U.S. 471, 486 (1970) 15

Gilligan v. Morgan, 413 U.S. 1 (1974) 6, 12, 13

Goldsmith v. Southerland, 426 F.2d 1395 (6th Cir. 1970) 17

Goode v. Rizzo, 506 F.2d 542 (1974), certiorari granted 420 U.S. 902 ..... 2, 8, 9, 10

Kenosha v. Bruno, 412 U.S. 507 (1973) 6

Lankford v. Gelston, 364 F.2d 197 (4th Cir. 1966) 11,15

O'Shea v. Littleton, 414 U.S. 488 (1973) 16, 18

Peek v. Mitchell, 419 F.2d 575 (1970) 2, 9

Statutes

28 U.S.C. § 1292(b) 7

28 U.S.C. § 1331 ..... 3, 6, 7, 17

28 U.S.C. § 1443(3) 6

42 U.S.C. § 1983 ..... 3, 6, 9, 15, 17

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No.

JAMES B. CONLISK, JR., etc., et al.,

Petitioners,

vs.

ARDALE CALVIN, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners, James B. Conlisk, Jr., Superintendent of Police, et al., respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this cause.

OPINION BELOW

The opinion of the Court of Appeals was handed down June 30, 1975 and is reported at 520 F.2d 1. The opinion is reproduced in Appendix A to this petition.

JURISDICTION

The opinion of the Seventh Circuit Court of Appeals was handed down June 30, 1975. The respondents filed a petition for rehearing, which the court denied on September 3, 1975 (Appendix B). This petition is filed within 90 days of denial of rehearing. Jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether the justiciability issue decided by the Seventh Circuit herein is identical to the justiciability issue decided by the Third Circuit in *Goode v. Rizzo*, 506 F.2d 542 (1974), certiorari granted 420 U.S. 920 (*Rizzo v. Goode*, No. 74-942, presently pending).

2. Whether the Seventh Circuit's judgment that the complaint presents a justiciable issue is in conflict with the Sixth Circuit's decision in *Peek v. Mitchell*, 410 F.2d 575 (1970).

3. Whether the allegation that the Chicago Police Department does not "effectively" control police misconduct presents a justiciable issue; whether numerous alleged acts of police misconduct permit a district court to enter an order requiring the police disciplinary procedures to conform to standards imposed by the court and to submit to periodic reporting to the court.

4. Whether mere recitation without further substantiation that the amount in controversy exceeds $10,000

establishes federal question jurisdiction of the City of Chicago under 28 U.S.C. § 1331.

5. Whether the organization respondents had standing to sue if they alleged that they received citizen complaints concerning police misconduct and that some of their members are also individual plaintiffs in the suit.

STATUTES INVOLVED

42 U.S.C. § 1983.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. § 1331.

> (a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.
>
> (b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

STATEMENT OF CASE

Respondents are seven individuals who brought suit against the respondents, claiming to have been subject to certain specified acts of police misconduct, and three organizations. All also allege that there exists a pattern of police misconduct.

The first organization, the Afro-American Patrolmen's League, Inc. is composed of members of the Chicago Police Department. The A.A.P.L. claims to have as its goals improvement of police services, including reduction of incidents of police misconduct. No harm to its members was alleged. The other two organizations are Concerned Citizens for Police Reform and the Chicago Urban League, which claim to have established machinery for citizens to report incidents of police misconduct. Concerned Citizens for Police Reform alleged that some of seven individual respondents are members of that organization, but the Chicago Urban League is silent as to its members, or whether they are harmed.

The suit claimed as defendants the Superintendent of Police and the individual members of the civilian disciplinary body of the Police Department, the Police Board of the City of Chicago. In addition, the complaint was against twelve named Chicago police officers and 25 "John Doe" police officers.

In addition to damages claimed by the seven named individual respondents, the complaint sought equitable relief in the form of imposition of respondent-devised and court-imposed standards for disciplining errant police officers. The thrust of the respondents' claim is that the present Chicago disciplinary system is not sufficiently effective to halt the alleged pattern of police misconduct. Respondents stated that police investigations of misconduct are not "thorough"

(complaint, par. 24), and that the disciplinary system is organized "in a highly subjective and discretionary manner." *Ibid.* Respondents further stated that the system does not take "appropriate disciplinary action" (*Ibid.*, par. 25) and that petitioners have not taken action to put into operation "appropriate reforms demanded of many organizations over a period of years by various persons and groups, including the Plaintiff organizations. . . ." (*Ibid.*, par. 27).

Specifically, the respondents sought to have the court ultimately issue an injunction under the following terms (*Ibid.*, Prayer for Relief, par. 2):

> "2. Enter its Order granting a permanent injunction commanding defendants CONLISK, the POLICE BOARD and the CITY OF CHICAGO, and their agents and employees and those persons in active concert or participation with them:
>
> (a) To take all appropriate steps within their power to prevent police officers from engaging in unconstitutional misconduct and to discipline appropriately and adequately officers who engage in such misconduct; and,
>
> (b) To effect the foregoing, to adopt and implement an effective police dicipline system for the receipt, investigation and disposition of complaints for unconstitutional misconduct by policemen, including among other provisions:
>
> (i) Performance by non-police personnel of the functions of receipt and investigation of such complaints;
>
> (ii) Opportunity for each complainant to be fully informed concerning the procedures and activities of the police discipline system in the handling of his complaint;

(iii) Access for the public to information concerning the procedures and performance of the police discipline system, including the final report on each complaint of unconstitutional misconduct;

(iv) Termination of any participation by the police discipline system in the preparation of the defense of pending or anticipated civil suits against policemen; and

(v) Correction of the other deficiencies in the organization and operation of the police discipline system set forth in this Complaint or established at trial.

"3. Retain jurisdiction and require defendants CONLISK, the POLICE BOARD and the CITY OF CHICAGO to report to the Court the steps they have taken to implement and conform with the Court's Order, such reports to be made at three month intervals for at least three years."

The district court, in a memorandum decision reported at 367 F. Supp. 476 (N.D. Ill. 1974), dismissed the claims for injunctive relief on the basis of this Court's recently handed down decision of *Gilligan v. Morgan*, 413 U.S. 1 (1974).

The district court found that the issue of effectiveness of police disciplinary system was not justiciable. The district court further dismissed all claims against the City of Chicago, holding that *Kenosha v. Bruno*, 412 U.S. 507 (1973) prohibited injunctive claims against the municipality pursuant to 42 U.S.C. § 1983; jurisdiction of the claims against the City of Chicago was not available under 28 U.S.C. § 1343(3); the respondents had not properly stated, in an amendment to their complaint, the $10,000 jurisdictional amount for federal question jurisdiction pursuant to 28 U.S.C. § 1331; and that it declined to take pendant jurisdiction of the

claims against the City of Chicago. The organization plaintiffs were dismissed because of lack of standing to pursue the claim against the petitioners.

The respondents sought and were granted leave to appeal to the Seventh Circuit Court of Appeals pursuant to 28 U.S.C. § 1292(b). In its decision, the Seventh Circuit, although stating that the district court would "do well" not to fashion its injunction too broadly, held that the respondents' claim for injunctive relief stated a justiciable issue, and that if the district court found the facts to be as the respondents alleged, court oversight of the police disciplinary system was warranted. In addition, the court held that the respondents' claim of $10,000 as the amount in controversy need be no more specific than that to state a claim for federal question jurisdiction against the City of Chicago pursuant to 28 U.S.C. § 1331. As to the standing of the organizations to bring suit, the court confirmed the dismissal of the Afro-American Patrolmen's League for lack of standing, but stated that the demonstrated interest in community affairs by the other two organizations and the fact that they claimed harm to members was sufficient to confer standing. In fact neither organization alleged any harm to their members other than the individuals already appearing as plaintiffs in the case.

REASONS FOR GRANTING THE WRIT

I.

THE QUESTION OF JUSTICIABILITY OF THE CLAIM SEEKING COURT-IMPOSED STANDARDS FOR THE CHICAGO POLICE DEPARTMENT DISCIPLINARY SYSTEM IS IDENTICAL TO THE QUESTION PENDING IN THIS COURT IN *RIZZO v. GOODE*, NO. 74-942.

The facts and legal issues presented in *Rizzo v. Goode*, No. 74-942, certiorari granted 420 U.S. 1003, and the present case are identical. In both cases, the respondents had alleged a widespread pattern of police misconduct. In *Rizzo*, the individual and organization plaintiffs had claimed that the Philadelphia Police Department's internal disciplinary system was not capable of coping with the problem. The court found the allegation to be supported by the evidence. Therefore the district court found, and the United States Court of Appeals for the Third Circuit approved (*Goode v. Ruzzo*, 506 F.2d 542 (1974)) a court-imposed plan to "improve" the police disciplinary system. The plan called for revision of the departmental procedures, including imposing time limits for completing investigations adjudication by impartial bodies and requiring the use of certain methods of proceeding. *Ibid.* at 545.

It appears that the instant claim and complaint was modeled after that in *Goode v. Rizzo*. The respondents here made allegations of numerous instances of police misconduct in violation of citizens' rights, just as the *Rizzo* plaintiffs had claimed "a pattern of violations of the legal and constitutional rights of citizens." 506 F.2d at 544. Furthermore, the injunction sought by the present respondents is the same as that in *Rizzo*, revision of the internal operating procedures of the police department system of discipline so as to conform to the respondents' conception of an effective system. See prayer for relief set out at pps. 5-6 of this petition. The present respondents sought that relief for the same reasons as did the *Rizzo* plaintiffs: "The existing police procedures for processing and adjudicating citizens complaints and for enforcing police discipline . . . were totally inadequate. . . ." *Ibid.* at 545.

Moreover in both *Rizzo* and the instant case the complaints sought continuing court supervision and periodic reports to the courts to insure that effectiveness is achieved.

Accordingly, certiorari should be granted because of the identity of the present issue with that of *Rizzo v. Goode*.

II.

A SPLIT IN THE CIRCUITS EXISTS CONCERNING WHETHER COURTS OF EQUITY MAY REQUIRE COURT-IMPOSED INTERNAL OPERATING PROCEDURES TO REMEDY POLICE CIVIL RIGHTS VIOLATIONS.

There is a split among several courts of appeals on the question directly at issue in this cause. These courts have taken directly irreconcilable points of view. Two circuits of the United States Court of Appeals have held that not only is the traditional § 1983 damage remedy available in cases of police violation of civil rights, but if complaints can show a pattern of unconstitutional police behavior, complainants are entitled to seek, and the court is entitled to order, that the police department alter its internal disciplinary system to the satisfaction of the complainants. In both the decision below of the Seventh Circuit, and in the Third Circuit's opinion in *Goode v. Rizzo*, 506 F.2d 542 (1974), the courts held that complaints seeking such extraordinary remedies stated causes of action.

However, the Sixth Circuit is not in accord. In *Peek v. Mitchell*, 419 F.2d 575 (1970), the court held that a complaint failed to state a cause of action which sought to have the district court establish fitness test to screen applicants to the Detroit Police Department and to initiate a program of human relations training to incumbent members of the police force. As in the instant case and *Goode*, the *Peek* complaint alleged a "systematic pattern" of unconstitutional police behavior. Nevertheless the Sixth Circuit stated that whatever other relief might be available, the doctrine of separation of powers and justiciability prohibited the court from meddling in internal police affairs:

> "The Mayor and Commissioner of Police of Detroit contend that the federal courts should not supervise or review their exercise of discretion in the area of police recruitment, screening of applicants, training and discipline as well as the method of police investigations, since this would be a patent violation of the historic doctrine of separation of powers. The District Court denied the relief requested against these defendants on the basis of separation of powers since the granting of such relief would cause the federal district courts to become an 'administrative arm of local government.'
>
> "We agree with the District Court's conclusion that the federal courts should not supervise the maintenance and operation of the Detroit Police Department. On this basis, that part of the plaintiffs' complaint fails to state a cause of action." 419 F.2d at 579.

Accordingly, the opposing views taken by the Seventh and Third, and Sixth Circuits makes it important that the question of whether the equitable relief sought by the respondents is available in federal courts be settled in a consistent manner. For this reason certiorari should be granted.

III.

THE DECISION BELOW IS IN CONFLICT WITH *GILLIGAN v. MORGAN*, 413 U.S. 1 AND CREATES A DANGEROUS PRECEDENT IN CONFLICT WITH THE TRADITIONAL RULE OF EQUITY BY PERMITTING JUDICIAL ENCROACHMENT UPON OTHER BRANCHES OF GOVERNMENT.

In its decision, the Seventh Circuit held that the district court might grant an injunction requiring the petitioners to change internal workings of the Chicago Police Department to conform to standards proposed by the respondents and approved by the court. The respondents' complaint alleged that a pattern of police misconduct existed; police discipline was not effective in stopping it; and that the court should require the adoption of five specific changes proposed by the respondents which would cure the deficiency and presumably stop misconduct.

The petitioners do not maintain that an injunction may not be entered if violations of civil rights are found to have occurred. But such injunctions may only be aimed at prohibiting illegal *conduct*. *Allee v. Medrano*, 414 U.S. 1020 (1974); *Lankford v. Gelston*, 364 F.2d 197 (4th Cir. 1966). In these two cases, the courts ordered police to halt specific acts of conduct found to be violative of civil rights. In contrast, equitable power is not available to dictate to another branch of government detailed plans of internal administrative operating procedure which a party or the court, in its own independent judgment, believes is appropriate to alleviate the problem.

This judicial policy has been expressed through the use of such various terms as "a political question," "nonjusticiability," or the traditional restraints of a court of equity. Whatever its appellation, the prayer for relief "presents an '[inappropriate] . . . subject matter for

judicial consideration,' for [plaintiffs] are asking the district court, in fashioning that prospective relief, 'to enter upon policy determinations for which judicially manageable standards are lacking.' *Baker v. Carr*, 369 U.S. 186, 198, 226 (1962)." *Gilligan v. Morgan*, 413 U.S. 1, 14 (1974) (concurring opinion of Mr. Justice Blackmun).

The *Gilligan* case is dispositive of the question; the Seventh Circuit was in error in not following it. The *Gilligan* plaintiffs asked that the court grant almost the same relief as the present respondents pray. They sought to have the court enter orders which would require the Governor of Ohio and its National Guard to promulgate administrative rules governing the training of the Guard. As do the present respondents, the *Gilligan* plaintiffs also sought to have the district court (1) evaluate the appropriateness of the training, weaponry and orders of the Ohio National Guard; (2) have the district court establish standards for training and orders; and (3) have the court assume continuing judicial surveillance over the National Guard to assure compliance with the injunction. *Gilligan*, 413 U.S. at 6-7.

This Court stated expressly that such an order, interfering with the procedures of another branch of government, was an inappropriate one for the court:

> "It would be difficult to think of a clearer example of the type of governmental action that was intended by the Constitution to be left to the political branches, directly responsible—as the Judicial Branch is not—to the elective process. Moreover, it is difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject always to civilian control of the Legislative and Executive Branches. The ultimate responsibility for these decisions is appropriately vested in branches of the government which are periodically subject to electoral accountability. It is this power of oversight and control of military force by elected representatives and officials which underlies our entire constitutional system." 413 U.S. at 10.

In addition to the commitment of such policy decisions to another branch of government, there is a further reason why such a remedy is inappropriate, that of the competence of a court to fashion such a remedy. The Court stated: "Trained professionals, subject to the day-to-day control of the responsible civilian authority, necessarily must make comparative judgments on the merits as to evolving methods of training, equipping and controlling military forces with respect to their duties under the Constitution. It would be inappropriate for a district judge to undertake this responsibility in the unlikely event that he possessed requisite technical competence to do so." 413 U.S. at 8.

The standards a court should consider in determining whether a question is justiciable or not are described in *Baker v. Carr*, 369 U.S. 186 (1962) as any of the following:

> ". . . a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality

> of embarrassment from multifarious pronouncements by various departments on one question." 369 U.S. 169, 217.

In the present case internal police operating procedures are demonstrably commited to the executive branch of government and are truly inappropriate for and unmanageable by a court. There is no doubt that a court might properly find, upon convincing evidence, that a pattern of police misconduct exists. But finding the appropriate sociological and political solution is not the role of a court. The respondents, for example, believe that a more effective disciplinary system will halt police misconduct. Effective discipline is a method of respondents' choosing, but surely it is not the only possible solution to the alleged problem. Several other alternatives might be equally effective to prevent alleged misconduct:

> More supervisory police personnel might be sent into the field to assure patrol officers' closer adherence to the law.
>
> Police salaries might be increased to attract better educated or better motivated persons.
>
> More intensive recruit training in civil rights might be instituted.
>
> Psychological screening to remove potential behavior problems might be instituted in recruiting or throughout the incumbent force.
>
> In-service training might be given to patrol officers in the field.

The extent to whether any of the above reforms might stop the problem, and whether local governments have the resources to put the solutions into effect, is a decision that is properly one for local governmental officials. It

cannot seriously be proposed that a district court can call together experts in municipal finance, police administration, criminal justice, sociology and political science and fashion a decree adopting one or more of the possible remedies and then require local government to finance it. What the court would be doing, in effect, is holding a one-man legislative hearing.

These are questions of social policies, and whether given the name "political questions" or "non-justiciable" issues, they are not appropriate for a federal district court. As this Court noted, policy questions such as these are not ones for the courts: ". . . the 14th Amendment gives the federal court no power to impose upon states their views of what constitutes wise economic or social policies. . . . The constitution does not empower this court to second guess state officials charged with the responsibility for allocating limited public welfare funds. . . ." *Dandridge v. Williams*, 397 U.S. 471, 486, 487, (1970).

Petitioners do not maintain that unconstitutional behavior should go unpunished. Of course, a pattern of conduct may be enjoined, such as the warrantless house-by-house search conducted in *Lankford v. Gelston*, *supra*, the pattern of police acts interfering with union organizing activities in *Allee v. Medrano*, *supra*. And, certainly Congress has created what it deems to be an appropriate remedy by requiring miscreant officials violating constitutional rights under color of state law to pay damages. 42 U.S.C. § 1983.

Not only is the substance of the decree sought by the respondents inappropriate for a federal court, the manner of that decree's enforcement is just as inap-

propriate. The respondents wished to establish a three-year supervisory period with quarterly reporting intervals. The Seventh Circuit, in its opinion below, suggested restraint in court supervision, but did not indicate that court supervision of internal administration is improper. But this Court has held such supervision improper. In a similar situation in which federal court oversight of the state judiciary was sought, *O'Shea v. Littleton*, 414 U.S. 488 (1973), this court, on equitable grounds, refused to permit the district court to sit as the supervisor of state criminal proceedings. To do so

> "would require for its enforcement the continuous supervision by the federal court over the conduct of the petitioners in the course of future criminal trial proceedings involving any of the members of the respondents' broadly defined class. The Court of Appeals disclaimed any intention of requiring the District Court to sit in constant day-to-day supervision of these judicial officers, but the 'periodic reporting' system it thought might be warranted would constitute a form of monitoring of the operation of state court functions that is antipathetic to established principles of comity." 414 U.S. at 501.

If federal courts may issue injunctions reaching internal police administrations in order to solve the alleged problem of police misbehavior, the precedent will be far-reaching and dangerous. Many persons may believe that not only in police disciplinary systems but also perhaps other internal workings of state government may be ineffective. Will plaintiffs now be able to flood the federal courts seeking implementation of their suggestions for changing local administrative practices to cure such problems as ineffective garbage pick-up, inadequate fire code inspection, overcrowded classrooms or any of the problems of local government any person might believe denies constitutional rights and could be improved by

changing administrative methods of operation? The decision of the Seventh Circuit opens the doors of federal courts to suits seeking such remedies. The decision should be reversed.

IV.

THE COMPLAINT WAS INSUFFICIENT TO ESTABLISH FEDERAL QUESTION JURISDICTION OF THE CLAIM AGAINST THE CITY OF CHICAGO.

Following the decision of *City of Kenosha v. Bruno*, 412 U.S. 514 (1973) in which it was held that injunctions against municipalities are impermissible under 42 U.S.C. § 1983, the respondents amended the instant claim in an attempt to retain jurisdiction of the City of Chicago under the "federal question" statute, 28 U.S.C. § 1331. This they did by adding a *pro forma* allegation, without further substantiation, that "as to each plaintiff and in the aggregate, the amount in controversy exceeds the sum of $10,000." The remainder of the complaint, however, was unchanged. No facts are contained in the complaint which support the claim or show how it was determined.

The naked allegation is not sufficient to bring the complaint within the jurisdictional requirement of § 1331. As the court pointed out in *Breault v. Feigenholtz*, 380 F.2d 91, 93 (7th Cir. 1967) cert. denied, 389 U.S. 1041, "mere averment of the amount claimed to be in controversy is not enough to confer jurisdiction." See also *Goldsmith v. Southerland*, 426 F.2d 1395, 1397 (6th Cir. 1970).

The jurisdictional predicate of the organizations is less clear. They do not seek damages against the City of Chicago, opinion of the Seventh Circuit, Appendix, p. 11a. The organizations, unlike individuals cannot prove (nor have they alleged) personal injuries, medical ex-

penses, pain and suffering which might bring into controversy an amount of $10,000. Indeed, what is "in controversy" is injunctive relief, not an amount of damages. 28 U.S.C. § 1331 has no application.

The Seventh Circuit's decision below upholding jurisdiction of the City of Chicago under federal question jurisdiction should be reversed.

V.

THE ORGANIZATIONS HAVE NO STANDING BECAUSE NEITHER THEY NOR THEIR MEMBERS WERE ALLEGED TO HAVE SUFFERED ACTUAL INJURY.

The United States Supreme Court in *O'Shea v. Littleton, supra*, in dismissing for lack of standing, summed up the requirements an organization must allege in order to have a sufficient interest in the case, and to have suffered sufficient harm, to have standing:

> "The complaint failed to satisfy the threshold requirement imposed by Art. III of the Constitution that those who seek to invoke the power of federal courts must allege an actual case or controversy. *Flast v. Cohen*, 392 U.S. 83, 94-101 (1968); *Jenkins v. McKeithen*, 395 U.S. 411, 421-425 (1969) (opinion of Marshall, J.). Plaintiffs in the federal courts must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction.' *Linda R.S. v. Richard*, 410 U.S. 614, 617 (1973). There must be a 'personal stake in the outcome' such as to 'assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' *Baker v. Carr*, 369 U.S. 186, 204 (1962). . . . Abstract injury is not enough. It must be alleged that the plaintiff 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged statute of official conduct. *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923). The injury or threat or injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical.' *Golden v. Zwickler*, 394 U.S. 103, 109-110 (1969); *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941); *United Public Workers v. Mitchell*, 330 U.S. 75, 89-91 (1947)." *O'Shea v. Littleton*, 414 U.S. 488 at 493-4.

Here, the Seventh Circuit held that "by reason of the injury to the organizations themselves, their clients and their members," the organization have standing, Appendix, p. 16a. But injury must be to *members, Sierra Club v. Morton*, 405 U.S. 727, or at least to persons the organizations actually represent, *O'Shea v. Littleton*, 414 U.S. 488. But only abstract injury to the respondent organizations, *themselves* is alleged. The Concerned Citizens for Police Reform and the Chicago Urban League are "injured" only in that they have established machinery to receive citizens' complaints of police misbehavior. The Urban League complaint does not mention its members. The Concerned Citizens For Police Reform complained that some of its members are also individual plaintiffs in the present suit. Those plaintiffs are presently before the Court, on their own behalf. It would be novel, indeed, to permit an organization standing for its representation of a person already represented. Such allegations are insufficient to demonstrate that these organizations have sufficiently suffered such a direct injury to present an actual controversy. The opinion below improperly reversed the district court's dismissal of these organizations for lack of standing.

CONCLUSION

For these reasons a writ of certiorari to U.S. Court of Appeals for the Seventh Circuit should be issued, and the judgment of that court should be reversed.

Respectfully submitted,

WILLIAM R. QUINLAN
Corporation Counsel of the City of Chicago
511 City Hall, Chicago, Illinois 60602

Attorney for Petitioners

DANIEL PASCALE
RICHARD F. FRIEDMAN
Assistant Corporation Counsel
Of Counsel

October 21, 1975

APPENDIX A

In the

United States Court of Appeals

For the Seventh Circuit

No. 74-1289

ARDALE CALVIN, et al.,

Plaintiffs-Appellants,

v.

JAMES B. CONLISK, JR., Etc., et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division — No. 72 C 3230
Joseph Sam Perry, *Judge.*

HEARD FEBRUARY 21, 1975 — DECIDED JUNE 30, 1975

Before CUMMINGS, PELL and TONE, *Circuit Judges.*

CUMMINGS, *Circuit Judge.* This action was brought under the Civil Rights Act, 42 U.S.C. § 1983, to redress alleged deprivations under color of law of rights, privileges and immunities secured by the First, Fourth, Fifth, Sixth and Fourteenth Amendments.[1] The plaintiffs are seven individuals, the Afro-American Patrolmen's League, Inc., the Concerned Citizens for

[1] Jurisdiction was originally predicated upon 28 U.S.C. §§ 1343(3), 1343(4), 2201 and 2202. By amendment of July 19, 1973, and substituted amendment of July 20, 1973, the plaintiffs added 28 U.S.C. § 1331, asserting that the amount in controversy exceeded $10,000 as to each plaintiff and in the aggregate and that no jurisdictional amount was required as to all defendants other than the City of Chicago "because the action arises under § 1343." 367 F.Supp. at 482.

Police Reform, and the Chicago Urban League. All of the organizational plaintiffs are Illinois not-for-profit corporations. The defendants were twelve named police officers,[2] the Chicago Superintendent of Police,[3] the five members of the Police Board, and the City of Chicago.

Besides detailing incidents in which the constitutional rights of the individual plaintiffs were supposedly violated by the named policemen and unknown John Doe policemen, the plaintiffs alleged that those incidents of police misconduct "are representative and exemplary of many similar occurrences of misconduct by Chicago policemen against civilians recurring over the course of many years, each of which involves the common element of excessive or unwarranted use of physical force." The complaint further states that unless defendants are enjoined, plaintiffs' and other persons' rights to be free from "excessive or unwarranted physical force by policemen * * *; unlawful arrest without a warrant or probable cause * * *; illegal search and seizure and other arbitrary and abusive police practices" will continue to be violated. Plaintiffs also allege that the Superintendent of Police, the Police Board members, and the City of Chicago

> "have the duty to prevent such misconduct and to discipline police officers who engage in it. However, they have failed to fulfill this duty, and have instead followed a course of conduct that condones, and in effect encourages such abusive misconduct. Their course of conduct is manifested particularly in the operation by these defendants of a police discipline system that, as a pattern or practice, does not make thorough investigations of such abusive misconduct and does not take appropriate disciplinary action against police officers who engage in it."

---

[2] The complaint was also brought against 25 John Doe police officers.

[3] James B. Conlisk, Jr. was then Superintendent of Police and therefore named as a defendant. He has been replaced by James Rochford, who should be substituted below as Superintendent Conlisk's successor pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

Plaintiffs further alleged that civil damage suits were an inadequate remedy because they lack deterrent effect. The plaintiffs complained that policemen bear neither the costs of such litigation nor of the final damage judgment, if any, and that adequate disciplinary action is not taken by the Department following a successful civil suit. Plaintiffs therefore sought an injunction against the City and the official defendants,[4] ordering them to take all appropriate steps within their power to prevent police officers from engaging in unconstitutional misconduct and to discipline officers who engage in such misconduct. In that regard, plaintiffs attacked the adequacy of the present internal disciplinary machinery and requested that the court order the institution of an effective police discipline system to handle complaints of unconstitutional police misconduct. Damages were asserted against the defendant police officers for violation of the individual plaintiffs' constitutional rights. Counterclaims were filed by nine of the defendant police officers seeking damages for bodily pain and mental anguish caused by the individual plaintiffs.

In a memorandum opinion[5] relying primarily upon *Gilligan v. Morgan*, 413 U.S. 1, the district court granted the motion of the City and the official defendants to dismiss the cause of action against them on the ground that the claim for declaratory and injunctive relief presented a non-justiciable controversy. 367 F. Supp. at 479-481, 484.

Acknowledging the possibility that its justiciability determination might be reversed on appeal, the district court went on to rule that the complaint failed to confer jurisdiction upon the court over the City of Chicago. 367 F.Supp. at 482-484. In rejecting allegations of jurisdiction under 28 U.S.C. § 1343, the court relied on *City of*

---

[4] The term "official defendants" refers to the defendants within the Department's hierarchy, the Superintendent and Police Board members, rather than the individual policeman defendants.

[5] *Calvin v. Conlisk*, 367 F.Supp. 476 (N.D. Ill. 1973).

Kenosha v. Bruno, 412 U.S. 507. The district judge also ruled that there was no federal question jurisdiction over the City under 28 U.S.C. § 1331 because

> "[t]his court cannot see that the equitable claim here against the City is so capable of evaluation in monetary terms as to satisfy the jurisdictional amount requirement * * *. It does not see that plaintiffs have a proper basis on which to allege an amount in controversy as to the City exceeding the $10,000 jurisdictional minimum, individually, or in the aggregate, either ad damnum, or by way of injunctive relief." 367 F.Supp at 484.

Finally, the court refused to exercise pendent jurisdiction. 367 F.Supp. at 483.

At defendants' request, the district court dismissed the three plaintiff organizations as parties.[6] The court also dismissed the 25 John Doe defendants for lack of jurisdiction because they had not been served and no

[6] It is not clear upon what the district court relied in dismissing the organizational plaintiffs. The district court stated:

> "Defendants in their motions to dismiss have asked the courts to dismiss plaintiffs Afro-American Patrolmen's League, Concerned Citizens for Police Reform and Chicago Urban League as parties plaintiff upon the ground that they lack standing to join in this suit. The court in its reconsideration is of the opinion that they should be dismissed. They do not plead specific injury from alleged acts of misconduct as do the individual plaintiffs. They allege a common concern for an improved disciplinary system within the Chicago Police Department and state they have received hundreds of complaints of police misconduct. They claim they have a sufficient stake in the controversy to obtain judicial resolution of it. *But the judicial resolution they seek is through this court's interrention to review and continue judicial surveillance and that is not a justiciable controrersy.* The organization plaintiffs are not necessary parties here to protect the rights of the individual plaintiffs in their suits for damages against the individual policemen. The individual plaintiffs are legally competent and are represented by well-qualified and competent counsel." (Emphasis added, 367 F.Supp. at 485.)

(Footnote continued on following page)

appearance was entered for them.[7] 367 F.Supp. at 486. The court refused to grant plaintiffs' motion to dismiss the nine counterclaims of defendant policemen, and certified this interlocutory appeal pursuant to 28 U.S.C. § 1292(b). 367 F.Supp. at 486. Only the counterclaims and the seven individual damage actions remained in the case after the district court's November 8, 1973, decision.

Justiciability of Police Discipline Issues

Originally the district court denied defendants' motion to dismiss the complaint except insofar as damages were sought from the City. However, on July 10, 1973, the defendants requested the court to reconsider on the basis that the complaint failed to present justiciable claims under the just released decision in *Gilligan v. Morgan*, 413 U.S. 1. As seen, the district court accepted this argument. We do not deem *Gilligan* to be controlling and therefore reverse.

In *Gilligan*, plaintiffs were students at Kent State University in Ohio. There the court of appeals thought equitable relief would be appropriate if there were a pattern of training in weaponry and orders of the Ohio National Guard favoring the use of fatal force to suppress civilian disorders where nonlethal force would suffice. *Morgan v. Rhodes*, 456 F.2d 608 (6th Cir. 1972). In

[6] *Continued*

Although much of the court's discussion is in terms familiar to conventional standing analysis, its decision to dismiss the organizational plaintiffs appears ultimately to have been based upon its earlier non-justiciability determination, which was made in light of the remedy sought and has no direct bearing on the standing of the organizational plaintiffs. However, since defendants properly raised the standing question both in the court below and on appeal and since both sides have briefed the issue in this Court, we discuss it *infra*, despite the uncertainty of the basis for the district court's ruling.

[7] Since appellants do not ask for the reversal of that portion of the district court's order dismissing the John Doe defendants, we do not consider the propriety of that ruling. But see *Schnell v. City of Chicago*, 407 F.2d 1084, 1086 (7th Cir. 1969).

a five-to-four opinion,* the Supreme Court held that no justiciable controversy was presented where the plaintiffs were calling on judicial power to assume continuing regulatory jurisdiction over the activities of the Ohio National Guard. In conflict with Article I, Section 8, Clause 16 of the Constitution with respect to the militia, such injunctive relief would embrace "critical areas of responsibility vested by the Constitution in the Legislative and Executive Branches of the Government." 413 U.S. at 7. The Chief Justice's opinion for the Court observed that this type of governmental action was intended to be left to the political branches, directly responsible to the elective process. However, the Court concluded that its opinion should not be read to "hold or imply that the conduct of the National Guard is always beyond judicial review or that there may not be accountability in a judicial forum for violations of law or for specific unlawful conduct by military personnel, whether by way of damages or injunctive relief." 413 U.S. at 11-12.

In *Gilligan*, the Court appeared to rely principally on the political question doctrine advanced by Judge Celebrezze in his dissent to the opinion of the Sixth Circuit. 413 U.S. at 7-12. Traditionally, this doctrine has been invoked to restrain the entrance by the federal courts into areas which are assigned by the Constitution to the control of the Legislative and Executive Branches of the federal Government. See *Flast v. Cohen*, 392 U.S. 83. There is no provision of the Constitution analogous to Article I, Section 8, Clause 16 (relied upon in *Gilligan*), that would be applicable to this case, which involves an area within the control of a municipal agency, rather than a co-equal branch of the federal Government. Furthermore, the cases have noted a strong reluctance of federal courts to issue injunctions of the type sought

* Four of the members of the Court dissented on the grounds that new "use of force" rules adopted by the Ohio National Guard and other changes in circumstances had rendered the case moot. 413 U.S. at 12. Consequently, we do not have the views of the dissenters on the justiciability question.

here, unless based upon a continuing course of conduct, rather than a single incident or isolated series of incidents. See *Allee v. Medrano*, 416 U.S. 802, 815-816, and cases cited therein, especially note 9. *Gilligan* stemmed from a single incident of the Ohio National Guard's use of force, while plaintiffs here allege a persistent course of unconstitutional police conduct apparently extending over a period of years.

Less than a year after *Gilligan* was decided and some six months after the district court rendered its memorandum opinion in this case, the Supreme Court decided *Allee v. Medrano*, *supra*. Like the instant case, plaintiffs there sought injunctive relief against the police under the Civil Rights Act. The Court held the district court's injunction against intimidation of the plaintiffs to be appropriate, stating that where "there is a persistent pattern of police misconduct, injunctive relief is appropriate." 416 U.S. at 815, citing *Hague v. Committee for Industrial Organization*, 307 U.S. 496. Chief Justice Berger, the author of *Gilligan*, dissented in *Allee* and, while not actually reaching the merits of the injunction issue, indicated that he would have reversed if the merits were properly before the Court. 416 U.S. at 848. However, the Chief Justice's dissent makes it clear that in his opinion injunctions may be addressed to the police in serious cases, provided the utmost care is taken to avoid unnecessary intrusions into police affairs. 416 U.S. at 838, 859-860. Furthermore, even the dissent fails to cite *Gilligan*, so that the entire Court obviously considered that National Guard case not to be controlling in a police misconduct situation. In accord with the *Allee* rule, various courts of appeals have approved injunctive relief where warranted by a pattern of police misconduct. *Goode v. Rizzo*, 506 F.2d 542 (3d Cir. 1974), certiorari granted, 43 LW 3527;† *Build of Buffalo, Inc. v.*

† For a similar Third Circuit decision, see *Lewis v. Kugler*, 446 F.2d 1343, 1350-1352 (3d Cir. 1971); see also cases cited in Comment, The Federal Injunction as a Remedy for Unconstitutional Police Conduct, 78 Yale L.J. 143, 146, n. 17 (1968).

Sedita, 441 F.2d 284 (2d Cir. 1971);[10] *Schnell v. City of Chicago*, 407 F.2d 1084 (7th Cir. 1969); *Lankford v. Gelston*, 364 F.2d 197 (4th Cir. 1966) (en banc).[11]

To hold that suits seeking injunctions against police are non-justiciable would erect a permanent bar to relief, no matter how egregious and persistent the violations of the constitutional rights of citizens.[12] Such a bar would not be wise public policy, especially where less absolute restrictions will serve to protect the police from undue court interference. Unnecessary interference with the daily operations of the police can be avoided by the refusal of federal courts to issue injunctions except where clearly necessary to prevent persistent and serious violations of constitutional rights and by drawing as narrowly as possible those injunctions which are required. As the preceding discussion indicates, both the case law and public policy call for a reversal of the district court's non-justiciability ruling in this case.

While holding that plaintiffs' claim for equitable relief is justiciable, we cannot intelligently pass on the type of decree that should be entered in the absence of a trial.

---

[10] In this case the Second Circuit stated the following about a suit very much like the instant one:

> "The question of the propriety of remedies prayed for by plaintiffs, however, is not the issue on this appeal. The question here is whether plaintiffs might conceivably have some remedy, whether or not suggested by them, and on the face of this complaint we cannot say 'to a certainty' that they will not be able to make out a case against [the Buffalo mayor and police chief] calling for at least part of the equitable relief they request, or some other appropriate relief." 441 F.2d at 288.

[11] *Lankford* was cited with approval in *Allee v. Medrano*, *supra* at 816, n. 9.

[12] The facts leading to the injunction in *Lankford*, which were sufficient to persuade even the *Allee* dissenters that an injunction was proper in that case (416 U.S. at 859), provide reason to prevent the imposition of an absolute bar to injunctions against police. In *Lankford*, 300 ghetto houses were searched in a 20-day period almost exclusively on the basis of anonymous tips and, therefore, without probable cause pursuant to police procedures approved by high police officials.

Assuming that plaintiffs can prove their allegations, they will be entitled to appropriate relief.[13] We are confident that the district court will not interfere unnecessarily with the running of the Police Department but will, if required by the proof at trial, enter as narrow a decree as possible to prevent violation of constitutional rights. In this respect,

> "The court ought to avoid unnecessarily dampening the vigor of a police department by becoming too deeply involved in the department's daily operations. At the same time, the court should not shrink from making constitutional guarantees effective. * * * The court might also require specific changes in the departmental disciplinary machinery to make punishment a more concrete threat to erring policemen." Comment, The Federal Injunction as a Remedy for Unconstitutional Police Conduct, *supra*, at 149,150.

Assuming that plaintiffs can prove the bulk of their allegations and thereby become entitled to appropriate relief, this relief need not necessarily be an injunction against the police. Mandatory affirmative injunctions are extraordinary remedies and the plaintiffs must demonstrate that they are entitled to such a remedy by satisfying the traditional criteria for the issuance of mandatory relief. For example, plaintiffs must show the inadequacy of the various actions at law that are available to protect constitutional rights and they must show the irreparable harm that will occur if the injunction is not issued. These hurdles, in addition to those already discussed, serve to safeguard the police from unnecessary federal court interference.

---

[13] In *Peek v. Mitchell*, 419 F.2d 575, 579 (6th Cir. 1970), on which defendants rely, the Sixth Circuit based its affirmance of the district court's dismissal on plaintiffs' failure to make more than conclusory allegations in their complaint. The court did acknowledge that equitable relief would be appropriate where government officials "have notice of the unconstitutional conduct of their subordinates and fail to prevent a recurrence of such misconduct," quoting approvingly from *Schnell v. City of Chicago*, *supra*.

Doubtless, any decree that might be entered will take into account any changes in the police disciplinary system inaugurated since the filing of this lawsuit. Thus at the oral argument, we were advised that independent civilians now look into complaints of police misconduct. Instead of requiring defendants to report ameliorative steps at 3-month intervals for three years, as prayed by plaintiffs, the district court might well find it necessary only to retain jurisdiction to assure compliance with its orders. Without interfering with police discretion in their normal routines, the district court could, if appropriate, formulate relief that would establish procedures to assure proper processing of citizen complaints concerning police misconduct. Thus such a decree should be designed to stop deprivations of constitutional rights without unnecessary encroachment upon local government functions. In sum, if liability is established at trial, the framing of equitable relief will be a delicate and difficult process, doubtless differing from the provisions requested by plaintiffs. See Comment, The Federal Injunction as a Remedy for Unconstitutional Police Conduct, *supra*. Plaintiffs would be well advised to be conservative in any decretal proposals.

Jurisdiction Over the City of Chicago

The district judge foresaw the possibility that this Court would reverse his non-justiciability determination and therefore decided the City of Chicago's ("City") motion to dismiss it as a party defendant for lack of jurisdiction. Plaintiffs contended below, as they do on appeal, that jurisdiction over the City is supportable under 28 U.S.C. § 1331, 28 U.S.C. § 1343(3), or through pendent jurisdiction.[14] The district court ruled that

[14] Plaintiffs originally sought to secure jurisdiction over the City under 42 U.S.C. § 1983 in conjunction with 28 U.S.C. § 1343. After the decision in *City of Kenosha v. Bruno*, 412 U.S. 507, it was clear that jurisdiction under Section 1983 would not lie. Plaintiffs therefore twice amended their complaint to add Section 1331 and an allegation of the jurisdictional amount as to each plaintiff. See 367 F.Supp. at 482.

plaintiffs had not established jurisdiction over the City and also refused to exercise pendent jurisdiction.[15] 337 F.Supp. at 482-484.

In *City of Kenosha v. Bruno*, 412 U.S. 507, municipalities were held to be beyond the scope of 42 U.S.C. § 1983 for purposes of equitable as well as monetary relief. See *Monroe v. Pape*, 365 U.S. 167. However, the *Bruno* case was remanded to determine whether the jurisdictional amount under 28 U.S.C. § 1331 had been met, thus indicating jurisdiction over a city could be established under that provision. 412 U.S. at 514; see also 412 U.S. at 516 (concurring opinion of Justices Brennan and Marshall).[16]

Since the plaintiffs have not pressed a damage claim against the City in this Court, their assertion of jurisdiction under Section 1331 must fail unless their injunction claim is found to put into controversy an amount greater than $10,000. See 28 U.S.C. § 1331. The district court, relying on our decision in *Giancana v. Johnson*, 335 F.2d 366 (7th Cir. 1964), certiorari denied, 379 U.S. 1001, held that plaintiffs' complaint failed to establish that the amount in controversy exceeded the requisite $10,000. 337 F.Supp. at 482-484.

The question of the monetary worth, for purposes of establishing the jurisdictional amount under Section 1331, of an action seeking an injunction against allegedly unconstitutional conduct is much discussed in the cases and among the commentators.[17] This Circuit, in the *Giancana* case, was among the first to announce a position. The Court there stated:

[15] An earlier ruling by the trial court which struck from the complaint plaintiffs' request for damages from the City has not been appealed.

[16] See also *Gautreaux v. Romney*, 448 F.2d 731, 734 (7th Cir. 1971).

[17] For a thorough review of the cases and commentary on this issue, see *Gomez v. Wilson*, 477 F.2d 411, 419-421 (D.C. Cir. 1973), especially n. 56. Two cases not discussed in *Gomez* are *McGaw v. Farrow*, 472 F.2d 952 (4th Cir. 1973), and *Burnett v. Tolson*, 474 F.2d 877 (4th Cir. 1973).

"Courts may not treat as a mere technicality the jurisdictional amount essential to the 'federal question' jurisdiction, even in this case where there is an allegedly unwarranted invasion of plaintiff's privacy. The showing of that essential is not a mere matter of form, but is a necessary element.

* * * * *

Here the complaint makes no express allegation of the essential jurisdictional sum or value. Plaintiff argues, however, that the jurisdictional sum or value should be inferred from the allegations, supported by unimpeached affidavits. But there are no facts from which that necessary element can be inferred. If, as plaintiff contends, the sum or value cannot be alleged because of the priceless rights involved, how can this court infer that essential element? And there is no finding of the essential sum or value and no evidence on which to base a finding.

* * * * *

> [I]t is no answer to failure to bring his claim within the jurisdictional prerequisite that the value is inestimable.
>
> * * * * *
>
> [P]laintiff failed to allege, or otherwise show, his damage accordingly, or to allege, or otherwise show facts from which that essential jurisdictional element may be inferred." 355 F.2d at 368-369.

The vitality of *Giancana* in this Circuit is called into question by the decision in *Gautreaux v. Romney, supra.* There we indicated our agreement with the district court's determination (No. 66 C 1460, 9/1/70, N.D. Ill.) that Count I of the complaint sufficiently alleged the jurisdictional amount. 448 F.2d at 735, n. 6. The complaint in *Gautreaux* sought declaratory and injunctive relief against the Secretary of Health, Education and Welfare to prevent federal aid to the Chicago Housing Authority because of the Authority's alleged racially discriminatory application of the funds. The constitutional

right sought to be protected there was, as here, difficult to price for jurisdictional purposes. In finding the plaintiffs' allegation sufficient, the district court had stated:

> "The rule governing dismissal for want of jurisdictional amount is that, unless the law gives a different rule, the sum claimed by the plaintiff in good faith at the time of filing controls. 1 Moore's Fed. Prac. ¶ 0.91, pp. 825-828. *Cf. Giancana v. Johnson,* 335 F.2d 366 (7th Cir. 1964) *cert. den.* 379 U.S. 1001. A monetary value is difficult to assess in cases where the violation of fundamental constitutional rights is alleged, and it does not appear that the allegation is not made in good faith."

The affirmance by this Court can be seen as a departure from the "tough" approach to the valuation of constitutional rights taken in *Giancana.* It should also be noted that the plaintiff in *Giancana* failed to allege even generally an amount in controversy, so that the *Gautreaux* panel could have viewed *Giancana* as confined to its facts. As the discussion below indicates, we need not reconcile the two cases in order to support our holding that the complaint herein satisfies the jurisdictional amount requirement, thus conferring jurisdiction over the City upon the district court.

Plaintiffs' complaint asserts seven instances of police misconduct of the type that they seek to prevent through this suit. In each, the plaintiffs assert that the unconstitutional acts of the police resulted in physical injury requiring medical treatment. While plaintiffs list the dollar value of some of the elements of damages, these claims are not exclusive, so that the suits are essentially unliquidated damage claims apparently involving pain and suffering, as well as other intangibles. Some complain of false imprisonment, Fourth Amendment violations, lost wages or legal fees, incurred as a result of the misconduct. Given the liberal standards by which courts judge assertions of the jurisdictional

amount,[18] and the assertion in the complaint as to each plaintiff that in excess of $10,000 is in controversy, the district court could not have properly ruled these allegations insufficient as to jurisdictional amount had the plaintiffs pressed their damage claims against the City under Section 1331. See n. 15, *supra*; cf. *Bell v. Hood*, 327 U.S. 678, and *Bivens v. Six Unknown and Named Agents*, 403 U.S. 388. Since the complaint alleges that the plight of the seven named plaintiffs is exemplary of the type of invasion of constitutional rights that the relief sought here seeks to prevent, it follows that the constitutional rights which the plaintiffs allege would be protected by the success of this suit have been satisfactorily shown to be worth $10,000. Thus this case differs from *Giancana* where there was neither an allegation as to the amount in controversy nor allegations of facts from which the Court could reasonably infer that the rights which plaintiff sought to protect were worth more than $10,000. Accordingly, we reverse the district court on this issue.[19]

Dismissal of Plaintiff Organizations

The district court dismissed the three plaintiff organizations from the suit, apparently on the erroneous ground that there was not a justiciable controversy.[20] On appeal, defendants urge that the organizations have no standing, citing *O'Shea v. Littleton*, 414 U.S. 488. We first examine the contact with this suit that the organizational plaintiffs allege in the complaint.

---

[18] The test is one of "good faith." See *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288-289; *Bell v. Preferred Life Assurance Society*, 320 U.S. 238, 243.

[19] Because of our decision that the district court has jurisdiction over the claims against the City under 28 U.S.C. § 1331, it is unnecessary to consider plaintiffs' additional arguments that there is also jurisdiction over the City under 28 U.S.C. § 1343(3) and under the doctrine of pendent jurisdiction.

[20] See n. 6, *supra*.

All three of the organizational plaintiffs operate services that receive complaints from persons aggrieved by police misconduct and seek to obtain redress for these clients. The three organizations allege that they would be able to reduce their efforts in processing such complaints if defendants were required to fulfill their constitutional obligations. It is also alleged that, in one form or another, each of these plaintiffs has as a purpose of its organization the protection of its members and clients from unconstitutional police activity. Plaintiffs Concerned Citizens for Police Reform ("CCPR") and Chicago Urban League ("Urban League") allege that their members have been subject to the police misconduct that this suit seeks to remedy in the past and continue to be in danger of such misconduct. Further, some of the named individual plaintiffs in this suit are alleged to be members of CCPR.

Standing is a concept with which the courts have long struggled. Such rules as do exist have been set forth in a series of Supreme Court opinions.[21] The allegations of CCPR and the Urban League satisfy the "injury in fact" to the organization or its members that was found absent in *Sierra Club v. Morton*, *supra*. In that case, the Court recognized that an organization could assert the standing of its members, citing *NAACP v. Button*, 371 U.S. 415.[22] This Circuit has recognized that an organization is especially well suited to represent its injured

---

[21] See, *e.g.*, *Baker v. Carr*, 369 U.S. 196, 204; *Flast v. Cohen*, 393 U.S. 83, 101; *Sierra Club v. Morton*, 405 U.S. 727; *United States v. SCRAP*, 412 U.S. 669.

[22] Relying upon some of these same Supreme Court decisions, a district court recently held:

> "[B]oth organizations are specifically and actively concerned with the location and provision of low income housing in the County. Among the officers or members or clients of both organizations are persons who have sought or who are seeking this housing in the County. The allegations of the complaint go right to the heart of the work, not merely the interest, of these organizations and the rights of persons associated with them. Therefore, they both have standing to sue." *Planning for People Coalition v. County of DuPage*, (No. 71 C 587, 9/21/72, N.D. Ill.).

members when representation of the interests is, as here, a primary reason of the organization's existence. *United States v. Board of School Commissioners of Indianapolis*, 466 F.2d 573, 576-577 (7th Cir. 1972), certiorari denied, 410 U.S. 909. Thus by reason of the injury to the organizations themselves, their clients and their members, CCPR and the Urban League have standing in this case.

The Afro-American Patrolmen's League ("AAPL"), however, is in a somewhat different position. While it has clients whose rights would be protected by a victory in this suit and one of its stated purposes is alleged to be "to preserve and protect the rights of residents of Chicago against abusive and arbitrary police conduct," its members are also members of the Chicago Police Department, the very persons whom this suit seeks to restrain from certain conduct. Assuming that any remedy is ever issued as a result of this suit, the members of the AAPL would likely be directly affected. The increased vigor in disciplinary proceedings against police misconduct, which this suit seeks to initiate, could result in AAPL members who now escape disciplinary sanctions becoming subject thereto. A clear potential conflict of interest exists so long as we assume, as we do, that AAPL members, as well as other policemen could be adversely affected under a remedy entered at some future time in this suit. This should not be taken to mean that this Court has any reason to suspect AAPL members of unconstitutional conduct; rather our ruling stems from the fact that the remedy sought in the complaint may directly affect members of the AAPL, thus creating an apparent conflict of interest. The AAPL was therefore properly dismissed as a plaintiff.

Dismissal of Counterclaims

As noted in the opinion below, plaintiffs moved to dismiss the counterclaims of nine police officers. These police officers have admitted that they entered into agreements with the Corporation Counsel of the City of Chicago providing for the officers to turn over to the City any monies obtained through judgments on the

counterclaims. Apparently they have not assigned their interests to the City. Therefore, they are still real parties in interest under Rule 17(a) of the Federal Rules of Civil Procedure. See 3A Moore's Federal Practice, ¶ 17.08 at p. 262; ¶ 17.09[1.-1], ¶ 17.13[1]. The district court correctly permitted the counterclaimants to proceed.

The order of the district court is affirmed insofar as it denied the motion to dismiss the counterclaims, insofar as it dismissed all John Doe defendants, and insofar as it dismissed the AAPL as a plaintiff. In its other respects the order is reversed and the cause is remanded for further proceedings not inconsistent herewith, with costs to plaintiffs.

APPENDIX B

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

September 3, 1975.

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. WILBUR F. PELL, JR., Circuit Judge

Hon. PHILIP W. TONE, Circuit Judge

ARDALE CALVIN, et al.,
Plaintiffs-Appellants,

No. 74-1289 **vs.**

JAMES B. CONLISK, JR., et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Divsn.

(72 C 3230)

On consideration of the petition for rehearing filed in the above-entitled cause,

IT IS HEREBY ORDERED that the petition for rehearing in the above-entitled appeal be, and the same is hereby, DENIED.

FPI-81—6-7-75-500 694

No. 75-606

Supreme Court, U. S.
FILED
DEC 1 1975
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

JAMES B. CONLISK, JR., et al.,
Petitioners,

vs.

ARDALE CALVIN, et al.,
Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

ROBERT C. HOWARD
360 N. Michigan Ave., Rm. 1118
Chicago, Illinois 60601
(312) 641-1181

MARTIN H. REDISH
357 E. Chicago Ave.
Chicago, Illinois 60611
(312) 649-8545

GERALD J. MULLER
53 W. Jackson, Rm. 1634
Chicago, Illinois 60604
(312) 939-5797

ALEXANDER L. POLIKOFF
109 N. Dearborn St., Rm. 1001
Chicago, Illinois 60602
(312) 641-5570
Counsel for Respondents

November 26, 1975

SORG/CHICAGO U.S.A.

INDEX

	PAGE
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Counter-Statement of the Case	5
Argument	5
I. *Rizzo* v. *Goode* Does Not Control Disposition of this Case	5
II. There Is No Conflict Among the Circuits	10
III. The Court Below Was Clearly Correct Under the Decisions of This Court in Holding That the Complaint in the Instant Case States a Justiciable Cause of Action	11
IV. The Court Below Was Clearly Correct in Concluding That the Complaint Properly Alleged the Requisite Jurisdictional Amount in Controversy	14
V. The Court Below Properly Held That Respondents Concerned Citizens for Police Reform and the Chicago Urban League Had Standing to Bring this Action	16
Conclusion	17

CITATIONS

	PAGE
Allee v. Medrano, 416 U.S. 802 (1974)	13, 14
Atlee v. Laird, 347 F.Supp. 689 (E.D.Pa. 1972)	13
Baker v. Carr, 369 U.S. 186 (1962)	12, 13, 17
Build of Buffalo, Inc. v. Sedita, 441 F.2d 284 (2d Cir. 1971)	7
Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961)	9
COPPAR v. Rizzo, 357 F.Supp. 1289 (E.D.Pa. 1973)	6
Flast v. Cohen, 393 U.S. 83 (1968)	17
Gilligan v. Morgan, 413 U.S. 1 (1973)	4, 11, 12, 13, 14
Hague v. CIO, 307 U.S. 496 (1939)	13, 14
KVOS, Inc. v. Associated Press, 299 U.S. 269 (1936)	14
Peek v. Mitchell, 419 F.2d 575 (6th Cir. 1970)	10
Rizzo v. Goode, No. 74-942	5, 6, 7, 8, 9
Ronzio v. Denver & R.G.W. R.R., 116 F.2d 604 (10th Cir. 1940)	16
St. Paul Mutual Indemnity Co. v. Red Cab Co., 303 U.S. 283 (1938)	15
Schnell v. City of Chicago, 407 F.2d 1084 (7th Cir. 1969)	9, 10
Sierra Club v. Morton, 405 U.S. 727 (1972)	17
Spock v. David, 469 F.2d 1047 (3d Cir. 1972)	16

Constitutional Provisions and Statutes

	PAGE
United States Constitution—Article I, Section 8, cl.16	11-12
Amendment I	4
Amendment IV	4
Amendment V	4
Amendment VI	4
Amendment XIV	4
28 U.S.C. §1331	2, 4, 14
28 U.S.C. §1343	4

Miscellaneous

Fed. R. Civ. P., R. 12(b)(6)	8
Fed. R. Civ. P., R. 84	14

In the
Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-606

JAMES B. CONLISK, JR., et al.,

Petitioners,

vs,

ARDALE CALVIN, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

---

BRIEF FOR THE RESPONDENTS IN OPPOSITION

Petitioners have asked this Court to issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in the above-entitled case. Respondents respectfully submit this brief in opposition to the Petition.

OPINION BELOW

The Opinion of the Seventh Circuit in this case is reported at 520 F. 2nd 1 and is reproduced in Appendix A to the Petition. The Opinion of the United States District Court of the Northern District of Illinois (The Honorable

Joseph Sam Perry, Judge), which was reversed in part and affirmed in part by the court below, is reported at 367 F. Supp. 476.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Is a trial court precluded from granting *any* relief whatsoever against police supervisors upon allegations, if proved at trial, that the supervisors participate in the systematic condonation and encouragement of widespread unconstitutional misconduct by policemen?

2. Is the question of the possible scope of remedies ultimately available to the trial court on a complaint alleging systematic violation of constitutional rights ripe for review in the context of a motion to dismiss when there has been neither a trial nor the entry of a remedial order by the District Court?

3. Is a justicable claim stated by allegations that police supervisors participate in the operation of a disciplinary system which systematically fails to thoroughly investigate or to punish unconstitutional police misconduct and that they thereby in effect encourage widespread acts of such misconduct by their subordinates?

4. Is the amount in controversy adequately alleged for purposes of 28 U.S.C. §1331 where it is stated to exceed $10,000 and supported by specific exemplary allegations of both liquidated and unliquidated damage claims?

5. Do community organizations have standing to sue upon allegations that they operate services that receive complaints from persons aggrieved by police misconduct and seek to obtain redress for these clients; that they would

be able to reduce their efforts in processing such complaints if successful in the litigation; that they have the organizational purpose of protecting their members and clients from unconstitutional police activity; and that their members have been subject to police misconduct in the past and continue to be in danger of such misconduct?

STATUTES INVOLVED

The applicable statutory provisions are set out in the Petition.

COUNTER-STATEMENT OF THE CASE

The seven individual and three organization respondents (plaintiffs below) brought the present action seeking remedy for a persistent pattern of unconstitutional misconduct by Chicago policemen toward civilians. Respondents alleged in detail incidents in which the constitutional rights of the individual respondents were violated by the policemen petitioners and then alleged that the incidents of police misconduct suffered by the individual respondents "are representative and exemplary of many similar occurrences of misconduct by Chicago policemen against civilians recurring over the course of many years, each of which involves the common element of excessive or unwarranted use of physical force." Complaint, Paragraphs 15-16. Respondents further alleged that the petitioners Superintendent of Police, Police Board members and the City

> have the duty to prevent such misconduct and to discipline police officers who engage in it. However, they have failed to fulfill this duty, and have instead followed a course of conduct that condones, and in effect encourages, such abusive misconduct. Their course of conduct is manifested particularly in the operation by these defendants of a police discipline system that,

> as a pattern or practice, does not make thorough investigations of such abusive misconduct and does not take appropriate disciplinary action against police officers who engage in it. Complaint, Paragraph 1.

This course of conduct on the part of the official petitioners and the City, which in itself causes the respondents and other civilians to be deprived of constitutional rights, was described in detail in Paragraphs 20-28 of the complaint.

Respondents sought declaratory and injunctive relief on the ground that petitioners' actions and inaction violated the constitutional rights and immunities of the individual respondents and the members of the organization respondents under the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution. Jurisdiction was invoked pursuant to 28 U.S.C. §§1331 and 1343. Complaint, Paragraph 2.

After originally denying petitioners' comprehensive motion to dismiss the claim for declaratory and equitable relief, the district court subsequently granted a renewed motion to dismiss on the ground that the claim was nonjusticiable under *Gilligan* v. *Morgan,* 413 U.S. 1 (1973). The Court of Appeals for the Seventh Circuit reversed the dismissal, holding that respondents' complaint seeking declaratory and injunctive relief presented a justicable question, that respondents' claim against the City of Chicago met the jurisdictional amount requirement imposed by 28 U.S.C. §1331, and that two of the three organization respondents had standing to maintain the action. However, the court below dismissed one of the organization respondents, the Afro-American Patrolmen's League, on the ground that a conflict existed between the League's prosecution of this suit and the interests of the League's members.

ARGUMENT

I.

RIZZO v. GOODE DOES NOT CONTROL THIS CASE

Petitioners contend that in light of the granting of a writ of certiorari by this Court in the case of *Rizzo* v. *Goode,* No. 74-942, certiorari should be granted in this case because of the similarity between the two cases. (8-9)* Respondents submit, however, that the differences between the two cases are substantial and significant: *Goode* involves the question of the propriety of particular relief upon a particular trial record, whereas this case involves the viability of a claim against a motion to dismiss.

In the "Questions Presented" section of their brief in *Goode,* petitioners there describe the issues involved therein in the following manner:

> Is it an *abuse of the injunctive power* of the federal district courts for a court to assume control of a major aspect of the operations of a municipal police department, require the issuance of its own intra-departmental procedural directives and maintain a continuing judicial surveillance over the department's operations, particularly in the absence of any finding of any unlawful conduct attributable to petitioner? (at 3, emphasis added).

Respondents' brief in *Goode* likewise phrases the question in terms of an inquiry into whether "the District Court abuse[d] its equitable powers. . . ." Brief for Respondents, *Rizzo* v. *Goode,* at 2. Thus *Goode* concerns the ad-

---

* All citations in parentheses, unless otherwise indicated, refer to the Petition or Appendix A to the Petition.

visability of a specific form of equitable relief based on specific detailed factual findings made after a complex trial. *COPPAR* v. *Rizzo*, 357 F. Supp. 1289 (E.D.Pa. 1973). By contrast, the instant case involves only the broad question of whether a request for *some* form of relief in light of an allegation of widespread unconstitutional police conduct openly condoned and, in effect, encouraged by supervisory officials presents a justiciable issue. The instant case will not attain a posture similar to that of *Goode* until the District Court (1) holds a trial on the merits (which it refused to do and which it has now been ordered to do by the Court of Appeals); (2) makes specific factual findings concerning the truth of the allegations contained in respondents' complaint; and (3) issues an order fashioning equitable relief, if any, to meet the specific needs of the situation. Even at that time the issue presented in *Goode* may not be presented in this case; whether it does depends entirely upon the nature of the relief granted.

Indeed, the Opinion below strongly suggests that it will not be, for the Court of Appeals stated that, although respondents' complaint presented a justiciable issue, "[w]e are confident that the district court will not interfere unnecessarily with the running of the Police Department. . . ." (9a). The court went on to note that, although respondents might be entitled to appropriate relief, "this relief need not necessarily be an injunction against the police." (*Id.*). Before such relief could be given, the court held, respondents must demonstrate that existing legal relief is inadequate. If liability were established, the goal of any relief given, the Court of Appeals concluded, should be "to stop deprivations of constitutional rights without unnecessary encroachment upon local government functions." (10a). The court recognized that the framing of

relief "will be a delicate and difficult process" (*Id.*) and expressed the desire "to safeguard the police from unnecessary federal court interference." (9a). *Cf., Build of Buffalo, Inc.* v. *Sedita*, 441 F.2d 284, 288 (2d Cir. 1971).

The Opinion below is thus considerably more cautious than the relief provided by the district court and approved by the Court of Appeals in *Goode*, under which, where a genuine factual dispute exists in a disciplinary proceeding, the Police Department would have to convene a quasi-judicial body to conduct a public adversary trial between the complainant and the police officer. Brief for Petitioners, *Rizzo* v. *Goode*, at 30. Such relief could be found to have imposed upon the police an undesirably cumbersome disciplinary procedure, or one not justified by the record in that case.

But the fact that a particular form of equitable relief may be inappropriate does not mean that no matter how desperately circumstances warrant, absolutely no equitable relief of any kind may be afforded to check police disciplinary laxity fostering unconstitutional police misconduct. Yet the only way the decision in the *Goode* case could control the decision in the instant case would be if this Court were to hold that under *no* circumstances can *any* form of equitable relief *ever* be justified to rectify a police disciplinary system which openly condones and fosters widespread unconstitutional police conduct. Such a result, respondents respectfully submit, would be most inadvisable, since, as the court below stated:

> To hold that suits seeking injunctions against police are non-justiciable would erect a permanent bar to relief, no matter how egregious and persistent the violations of the constitutional rights of citizens. (8a; footnote omitted).

This case differs from *Goode* also in terms of the factual findings deemed necessary to authorize injunctive relief. The allegations in respondents' complaint, which at this stage of the proceedings are assumed to be true, Fed. R. Civ. P., R. 12(b)(6), go far beyond the factual findings of Judge Fullam in *Goode*. Whereas Judge Fullam at no time explicitly found that the defendant supervisory officials had acted unlawfully, the complaint in the present case alleges that, despite notice of widespread unconstitutional police conduct, the official petitioners

> have failed or refused to fulfill their duty to regulate and control the police officers under their direction, to prevent those officers from acting in a manner that deprives persons of their rights, privileges and immunities under the Constitution and laws of the United States, and to discipline officers who commit such acts of misconduct.
>
> Complaint, Paragraph 21.

The complaint further alleged that certain of the official defendants, including the City of Chicago,

> over the course of many years, have participated in, acquiesced in or condoned a pattern or practice on the part of the police discipline system of not making thorough investigations of occurrences of unconstitutional misconduct and not taking appropriate disciplinary action against police officers who engage in such misconduct.
>
> Complaint, Paragraph 22.

Moreover, the complaint alleged that "[t]he pattern or practice on the part of the police discipline system of not making thorough investigations of occurrences of unconstitutional misconduct and not taking appropriate disciplinary action against police officers who engage in such misconduct, and the participation in, acquiescence in or condonation of this pattern or practice by Defendants"

constituted "a de facto policy on the part of these Defendants that policemen will not be disciplined at all or will be disciplined inadequately for acts of unconstitutional misconduct and . . . has the effect of encouraging policemen to commit acts of unconstitutional misconduct. . . ." Complaint, Paragraph 25.

That such allegations, if proven, establish direct violations of constitutional rights by petitioners is clear. As the Seventh Circuit held in *Schnell* v. *City of Chicago*, 407 F. 2d 1084, 1086 (7th Cir. 1969):

> [E]quitable relief is appropriate in a situation when governmental officials have notice of the unconstitutional conduct of their subordinates and fail to prevent a recurrence of such conduct.

Similarly, this Court has held that:

> [N]o State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be. *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 725 (1961).

Thus, if respondents prove their allegations at trial, a clear showing of unconstitutional conduct on the part of police supervisors—a finding never explicitly made in *Goode*—will have been made and will constitute the basis of some form of relief against them.

Finally, respondents' complaint specifically alleged that petitioners actively "participated in" the operation of a lax disciplinary system which had the direct consequence of increasing the acts of unconstitutional police misconduct, Complaint, Paragraphs 22 and 25, thus going well beyond contentions of mere failure to act on the part of petitioners.

Accordingly, *Rizzo* v. *Goode* does not control the disposition of this case.

II.

THERE IS NO CONFLICT AMONG THE CIRCUITS

Petitioners contend that the Sixth Circuit's decision in *Peek* v. *Mitchell,* 419 F.2d 575 (6th Cir. 1970), is contrary to the decision of the Seventh Circuit in the instant case and thus creates a conflict among the Circuits. As the court below correctly recognized, however, the decision in *Peek* is wholly consistent with the result in the instant case. The court in *Peek* affirmed a dismissal of plaintiffs' complaint solely on the ground that "the allegations of the plaintiffs are mere conclusions . . . unsupported by any allegation of fact." 419 F.2d at 579. By contrast, in the instant case respondents have described with painstaking detail numerous specific acts of unconstitutional police conduct and their systematic official condonation.

That the court in *Peek* would have decided the instant case just as the Seventh Circuit did is made clear by the Sixth Circuit's statement that its holding was not meant to imply "that under a sufficient complaint alleging specific deprivations of rights by such public officials that a cause of action could not be stated . . . ." *Id.* The court then quoted approvingly the statement of the Seventh Circuit in *Schnell* v. *City of Chicago,* 407 F. 2d 1084, 1086 (7th Cir. 1969): "[E]quitable relief is appropriate in a situation where governmental officials have notice of the unconstitutional conduct of their subordinates and fail to prevent a recurrence of such misconduct." Hence *Peek* presents no conflict with the decision in the instant case.

III.

THE COURT BELOW WAS CLEARLY CORRECT UNDER THE DECISIONS OF THIS COURT IN HOLDING THAT THE COMPLAINT IN THE INSTANT CASE STATES A JUSTICIABLE CAUSE OF ACTION

Petitioners next contend that *Gilligan* v. *Morgan, supra,* is dispositive of this case and that the Court of Appeals was in error in not following it. (12) The trial court dismissed respondents' complaint because it felt that, under this Court's decision in *Gilligan* v. *Morgan,* 413 U.S. 1 (1973), a suit for injunctive relief against widespread unconstitutional police conduct did not present a justiciable issue. The Court of Appeals reversed (5a), reasoning that "[t]o hold that suits seeking injunctions against police are non-justiciable would erect a permanent bar to relief, no matter how egregious and persistent the violation of the constitutional rights of citizens." (8a) (footnote omitted)

That this Court's decision in *Gilligan* in no way precludes the relief requested by respondents can be seen by a brief comparison of the facts in the two cases. In *Gilligan,* which grew out of the 1970 confrontation between the Ohio National Guard and Kent State University students, plaintiffs attempted to obtain continuing judicial evaluation of the appropriateness of the "training, weaponry and orders of the Ohio National Guard." 413 U.S. at 5-6. Plaintiffs further demanded "that the District Court establish standards for the training, kind of weapons and scope and kind of orders to control the actions of the National Guard." *Id.* at 6. In holding the issues presented by plaintiffs' demands to be non-justiciable, this Court emphasized the "very relevant" provision of Article I.,

Section 8, cl. 16 of the Constitution, which vests in Congress the power:

> To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively the Appointment of the Officers, and the Authority of Training the Militia according to the discipline *prescribed by Congress,* 413 U.S. at 6 (emphasis added by Court).

The Court said that "[t]he Guard is an essential reserve component of the Armed Forces of the United States, available with regular forces in time of war. The Guard also may be federalized in addition to its role under state governments, to assist in controlling civil disorders." 413 U.S. at 7 (footnote omitted). Noting that plaintiffs sought to have the judiciary review military policy, the Court stated:

> It would be difficult to think of a clearer example of the type of governmental action that was intended by the Constitution to be left to the political branches, directly responsible—as the Judicial Branch is not—to the elective process. Moreover, it is difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject *always* to civilian control of the Legislative and Executive Branches . . . (413 U.S. at 10) (emphasis in original)

Unlike *Gilligan,* this case does not involve a dispute between the Federal judiciary and a coordinate branch of the Federal Government, a prerequisite for application of the "political question" doctrine of non-justiciability relied on by this Court in *Gilligan. Baker* v. *Carr,* 369 U.S. 186,

210, 226 (1962). The political question doctrine "rests not upon concepts of federalism but rather upon the structure of our national government—the separation of powers." *Atlee* v. *Laird,* 347 F. Supp. 689, 699 (E.D. Pa. 1972).

Also, unlike *Gilligan,* the present case does not involve a power explicitly committed by the text of the Constitution to a branch of government other than the judiciary—another prerequisite for application of the political question doctrine. *Baker* v. *Carr,* 369 U.S. at 217. Unlike *Gilligan,* the complaint in the present case does not call for judicial interference with governmental discretion respecting complex issues of training and weaponry or concerning a military unit employed primarily, if not exclusively, in cases of severe emergency. Rather, respondents here merely seek a determination and remedy concerning systematic unconstitutional misconduct by the local police.

Finally, as noted by the court below (7a), "*Gilligan* stemmed from a single incident of the Ohio National Guard's use of force, while plaintiffs here allege a persistent course of unconstitutional police conduct apparently extending over a period of years."

That *Gilligan* does not preclude judicial action in the circumstances of this case is demonstrated by this Court's decision in *Allee* v. *Medrano,* 416 U.S. 802 (1974). There this Court upheld an injunction against police intimidation, stating that where "there is a persistent pattern of police misconduct, injunctive relief is appropriate." 416 U.S. at 815, citing *Hague* v. *CIO,* 307 U.S. 496, 517 (1939). Petitioners attempt to distinguish *Allee* by arguing that the injunction in that case was directed at specific conduct. (11) But, as noted previously, at this point in the proceeding the nature and form of any injunctive relief has not been determined. See Opinion of the court below, at

8a-9a. The only pertinent issue before the Court of Appeals was whether a claim for any relief, injunctive or otherwise, against local police presented a justiciable question. This Court's decision in *Allee* is dispositive of this limited question.

It is clear, then, that the decision of the court below is in no sense inconsistent with this Court's opinion in *Gilligan*. On the contrary, the Seventh Circuit's recognition that, in the face of a widespread pattern of unconstitutional police conduct, injunctive relief is appropriate follows inextricably from this Court's holdings in *Allee* and *Hague*.

IV.

THE COURT BELOW WAS CLEARLY CORRECT IN CONCLUDING THAT THE COMPLAINT PROPERLY ALLEGED THE REQUISITE JURISDICTIONAL AMOUNT IN CONTROVERSY

Petitioners do not deny that a complaint for injunctive relief against the City of Chicago may properly be brought under the Constitution and 28 U.S.C. §1331. Petitioners contend, however, that respondents' allegations in their complaint that the amount in controversy exceeds $10,000 are insufficient to establish the requisite amount in controversy, arguing that no supporting factual data is provided. (17-18)

That respondents' pleading of the amount in controversy is sufficient can be seen by examining Official Form 2, Federal Rules of Civil Procedure, which includes the following: "The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars." Under Rule 84, the Forms "are sufficient under the rules. . . ." *Cf., KVOS, Inc.* v. *Associated Press*, 299 U.S. 269, 277 (1936).

Once an allegation of the jurisdictional amount is made on good faith in the proper form, the complaint will be dismissed for failure to meet the minimum amount requirement only when it appears "to a legal certainty that the claim is for less than the jurisdictional amount to justify dismissal." *St. Paul Mutual Indemnity Co.* v. *Red Cab Co.*, 303 U.S. 283, 288 (1938). There is absolutely no basis upon which to conclude that respondents' claim is insufficient "to a legal certainty."

Indeed, notwithstanding petitioners' argument that there are no supporting allegations, the complaint makes clear that the amount in controversy with respect to each respondent is worth far more than $10,000. As stated by the court below (13a-14a):

> Plaintiffs' complaint asserts seven instances of police misconduct of the type that they seek to prevent through this suit. In each, the plaintiffs assert that the unconstitutional acts of the police resulted in physical injury requiring medical treatment. While plaintiffs list the dollar value of some of the elements of damages, these claims are not exclusive, so that the suits are essentially unliquidated damage claims apparently involving pain and suffering, as well as other intangibles. Some complain of false imprisonment, Fourth Amendment violations, lost wages or legal fees, incurred as a result of the misconduct. . . . Since the complaint alleges that the plight of the seven named plaintiffs is exemplary of the type of invasion of constitutional rights that the relief sought here seeks to prevent, it follows that the constitutional rights which the plaintiffs allege would be protected by the success of this suit have been satisfactorily shown to be worth $10,000.

Central to respondents' complaint is the desire to protect their constitutional rights to be free from unwarranted attacks on their persons and harassment by police.

Though precise valuation of such rights may be difficult, there can be little question that their value is far in excess of the jurisdictional minimum. See, e.g., *Spock* v. *David,* 469 F. 2d 1047 (3d Cir. 1972). Moreover, the value of the suit to the defendant City of Chicago is clearly in excess of $10,000 since, if respondents' request for injunctive relief were granted, substantial expenditures of the City's police discipline system would have to be reallocated. It is well established that the requisite jurisdictional amount requirement may be met by looking to the value of the controversy to the defendant, as well as to plaintiff. See, e.g., *Ronzio* v. *Denver & R.G.W. R.R.,* 116 F.2d 604 (10th Cir. 1940).

V.

THE COURT BELOW PROPERLY HELD THAT RESPONDENTS CONCERNED CITIZENS FOR POLICE REFORM AND THE CHICAGO URBAN LEAGUE HAD STANDING TO BRING THIS ACTION

Finally, petitioners contend that two organization respondents lack standing. (18-19)

As summarized by the Court of Appeals, the basis for standing of the organization respondents is as follows:

> All three of the organizational plaintiffs operate services that receive complaints from persons aggrieved by police misconduct and seek to obtain redress for these clients. The three organizations allege that they would be able to reduce their efforts in processing such complaints if defendants were required to fulfill their constitutional obligations. It is also alleged that, in one form or another, each of these plaintiffs has as a purpose of its organization the protection of its members and clients from unconstitutional police activity. Plaintiffs Concerned Citizens for Police Reform ("CCPR") and Chicago Urban League ("Urban League") allege that their members have been subject to the police misconduct that this suit seeks to remedy in the past and continue to be in danger of such misconduct. Further, some of the named individual plaintiffs in this suit are alleged to be members of CCPR. (15a)

The court below was correct in holding that CCPR and the Urban League have standing to maintain this action. The allegations in the complaint summarized above establish that they have a sufficient "personal stake in the outcome of the controversy" (*Baker* v. *Carr,* 369 U.S. 186, 204 (1962)) to ensure that "the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." *Flast* v. *Cohen,* 393 U.S. 83, 101 (1968). In light of the complaint's allegations, respondent organizations have suffered the requisite "injury in fact" (*Sierra Club* v. *Morton,* 405 U.S. 727, 733-35 (1972)) as a result of petitioners' challenged conduct.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari in this case should be denied.

Respectfully submitted,

Robert C. Howard
Martin H. Redish
Gerald J. Muller
Alexander L. Polikoff
Counsel for Respondents

November 26, 1975